

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DOUGLAS MCKINLEY, II, et al.,
Plaintiffs,
v.
COUNTY OF FRESNO, et al.,
Defendants.

Case No. 1:21-cv-00754-NONE-SAB

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DENYING PLAINTIFF
DOUGLAS MCKINLEY, II'S
APPLICATION TO PROCEED *IN FORMA*
PAUPERIS AND REQUIRING PLAINTIFF
TO PAY FILING FEE IN THIS MATTER

(ECF Nos. 2, 3)

OBJECTIONS DUE WITHIN TWENTY-
ONE DAYS

Douglas McKinley, II, and Joanna McKinley ("Plaintiffs") filed a complaint in this action on May 10, 2021. (ECF No. 1.) Plaintiff Douglas McKinley did not pay the filing fee in this action and instead filed an application to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. Plaintiff Joanna McKinley did not file an application to proceed without prepayment or fees nor did she pay the filing fee. Upon review of Plaintiff Douglas McKinley's application to proceed *in forma pauperis*, the Court found that it was not sufficiently completed to determine if he is entitled to proceed in this action without prepayment of fees.

In order to proceed in court without prepayment of the filing fee, a plaintiff must submit an affidavit demonstrating that he "is unable to pay such fees or give security therefor." 28 U.S.C. § 1915(a)(1). As Plaintiffs were advised in an order on May 12, 2021, in assessing

whether a certain income level meets the poverty threshold under Section 1915(a)(1), courts look to the federal poverty guidelines developed each year by the Department of Health and Human Services. See, e.g., Paco v. Myers, No. CIV. 13-00701 ACK, 2013 WL 6843057 (D. Haw. Dec. 26, 2013); Lint v. City of Boise, No. CV09-72-S-EJL, 2009 WL 1149442, at *2 (D. Idaho Apr. 28, 2009) (and cases cited therein). The 2021 Poverty Guidelines for the 48 contiguous states for a household of two is \$17,420.00. 2021 Poverty Guidelines, <https://aspe.hhs.gov/poverty-guidelines> (last visited May 12, 2021).

In his application, Plaintiff Douglas McKinley stated that he receives gross wages of \$1,466.00 every other week making his monthly income \$2,932.00. Therefore, the Court found that Plaintiff Douglas McKinley's income is \$35,184.00, well above the poverty level for a family of two. Further, Plaintiff Douglas McKinley did not complete the section asking if he receives any other form of income. Additionally, Joanna McKinley also is named as a plaintiff and signed the complaint but did not file an application to proceed *in forma pauperis*.

On May 12, 2021, an order issued requiring Plaintiffs to file a long form application to proceed *in forma pauperis* in this action or pay the filing fee in full within twenty days. More than twenty days have passed and Plaintiffs have not complied with nor otherwise responded to the May 12, 2021 order. The Court finds that Plaintiff Douglas McKinley has not demonstrated that he is entitled to proceed without prepayment of fees in this action.

Accordingly, it is HEREBY RECOMMENDED that:

1. Plaintiff Douglas McKinley's application to proceed *in forma pauperis* be DENIED; and
2. Plaintiffs be ordered to pay the \$402.00 filing fee for this action.

This findings and recommendations is submitted to the district judge assigned to this action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule 304. Within twenty-one days of service of this recommendation, Plaintiffs may file written objections to this findings and recommendations with the court. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." The district judge will review the magistrate judge's findings and recommendations pursuant to 28 U.S.C. § 636(b)(1)(C).

1 Plaintiffs are advised that failure to file objections within the specified time may result in the
2 waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing
3 Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

4
5 IT IS SO ORDERED.

6 Dated: **June 10, 2021**


UNITED STATES MAGISTRATE JUDGE